J.D. Consulting, LLC, d/b/a Donaldson Traditional Interiors *and* Local 1, New York, International Union of Bricklayers and Allied Craftworkers, AFL–CIO, Petitioner *and* Operative Plasterers and Cement Masons International Association, Local 530, AFL–CIO, Intervenor

J. Rosen Plastering, Inc. *and* Local 1, New York, International Union of Bricklayers and Allied Craftworkers, AFL–CIO, Petitioner *and* Operative Plasterers and Cement Masons International Association, Local 530, AFL–CIO, Intervenor

Cooper Plastering Corp. *and* Local 1, New York, International Union of Bricklayers and Allied Craftworkers, AFL–CIO, Petitioner *and* Operative Plasterers and Cement Masons International Association, Local 530, AFL–CIO, Intervenor Cases 29–RC–10336, 29–RC–10345, 29–RC–10379 (formerly 22–RC–12590).

November 30, 2005

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On July 6, 2005, the Regional Director for Region 29 issued a Decision and Direction of Election in the above-entitled proceedings in which he found that a collective-bargaining agreement between the Plastering and Spray Fireproofing Contractors of Greater New York, Inc. (the Association) and Operative Plasterers and Cement Masons International Association, Local 530, AFL–CIO (the Intervenor) is an 8(f) agreement and that each of the three petitioned-for single-employer units of plasterers is a separately appropriate unit. Thereafter, pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employers, the Association, and the Intervenor filed timely requests for review of the Regional Director's decision. They argued that the Association and the Intervenor have a collective-bargaining relationship governed by Section 9(a) of the Act and that the only appropriate unit is a multiemployer unit.

On August 24, 2005, the Board granted the requests for review solely with respect to whether the contract between the Association and the Intervenor is governed by Section 9(a) or 8(f) of the Act and whether the petitioned-for single employer units are appropriate.[1] The Petitioner, the Employers, the Association, and the Intervenor filed briefs on review.[2]

Having carefully considered the entire record in this proceeding, including the briefs on review, we find, contrary to the Regional Director, that the Association, to which the Employers belong, voluntarily recognized the Intervenor under Section 9(a) of the Act and entered into a 9(a) contract. We further find, accordingly, that the petitioned-for single-employer units are not separately appropriate.

Background. The Employers perform plastering work as subcontractors for construction industry employers. Each is a member of the Association, comprised of a group of employers in the plastering industry. The Association, among other things, negotiates and administers collective-bargaining agreements with unions on behalf of its employer-members. On July 1, 2002, the Association signed a contract with the Intervenor which runs from July 1, 2002 through January 31, 2006.

On March 9 and March 23, 2004, the Petitioner filed three petitions seeking to represent, in single-employer units, plasterers employed by each of the three Employers involved in this proceeding. The Regional Director found that the contract between the Association and the Intervenor is an 8(f) agreement that does not bar an election in each of the petitioned-for single-employer units. The Regional Director also found that, even assuming the contract were a 9(a) agreement, the petitions were nonetheless timely and the petitioned-for single-employer units were appropriate. For the reasons set forth below and contrary to the Regional Director, we find that (1) the Association voluntarily recognized the Intervenor as the 9(a) representative of a majority of employees employed by each Association member; (2) the Association and the Intervenor memorialized their 9(a) relationship in the current collective-bargaining agreement; and (3) the single-employer units are inappropriate in light of the Employers' bargaining history under Section 9(a) on a multiemployer basis.

Multiemployer bargaining. Each of the Employers involved in this proceeding is a member of the Association. Association President Michael Patti testified that one of the Association's purposes is to negotiate collective-bargaining agreements with labor organizations. Prior to bargaining, Patti meets with Association members to discuss bargaining issues. Association members author-

[1] The Board denied review of the Regional Director's finding that the petitions were timely filed even if the Intervenor were the 9(a) representative of the Employers' employees.

[2] The Employers and the Association filed a joint request for review and a joint brief on review.

ize Patti to negotiate on their behalf, to accept negotiated contract terms, and to sign a collective-bargaining agreement on their behalf.[3]

Donaldson Traditional Interiors and J. Rosen Plastering, Inc. have been members of the Association since 1996–1997 and have been in a collective-bargaining relationship with the Intervenor since at least 2000. James Donaldson, the owner of Donaldson Traditional Interiors, testified that the Association negotiated the current contract with "total authority . . . to do the negotiation" on behalf of employer members. Donaldson also testified that although employer members did not ratify or sign the current contract, they "are obliged to go along with whatever they [the negotiators] agree to." Donaldson and Jerome Rosen of J. Rosen Plastering testified that, as signatory members of the Association, their companies are "automatically bound" by a collective-bargaining agreement negotiated on behalf of Association members. James Cooper, owner and president of Cooper Plastering Corporation, testified that he became a member of the Association shortly after the current contract was executed, and that, as an Association member, he considers himself bound by that contract.

"The test to be applied in assessing the status of the Association as a multiemployer unit is well established: it is whether the members of the group have indicated from the outset an unequivocal intention to be bound in collective bargaining by group rather than individual action. . . ." *Weyerhaeuser Co.*, 166 NLRB 299 (1967). Unequivocal intent to be bound by joint bargaining may be found where, for example, an employer agrees to adopt a contract resulting from joint bargaining. *Architectural Contractors Trade Assn.*, 343 NLRB No. 39 (2004); *Arbor Construction Personnel, Inc.*, 343 NLRB No. 38 (2004). We find, based on the testimony of Association members, that they (1) delegated authority to Association representatives to bargain on their behalf; (2) delegated authority to Association representatives to sign collective-bargaining agreements on their behalf; and (3) unequivocally intended to be bound by the results achieved by collective bargaining engaged in by Association representatives on their behalf.[4]

Section 9(a) relationship. The Board presumes that a bargaining relationship in the construction industry is governed by Section 8(f) of the Act. *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d. Cir. 1988). The party asserting that the relationship is governed by 9(a) and not 8(f) has the burden of proving that such a relationship exists. Id. at 1385 fn. 41. To establish that a union has achieved 9(a) majority status, the Board requires evidence that the union unequivocally demanded recognition as the employees' 9(a) representative, and that the employer unequivocally accepted the demand for recognition. The Board also requires a contemporaneous showing of the union's majority support among the employer's employees, or a showing that the employer acknowledged and accepted that the union enjoyed majority support. *H.Y. Floors & Gameline Painting*, 331 NLRB 304 (2000); *Oklahoma Installation Co.*, 325 NLRB 741, 742 (1998), enf. denied 219 F.3d 1160 (10th Cir. 2000); *Golden West Electric*, 307 NLRB 1494 (1992). In the context of a multiemployer unit, the union must demonstrate its majority status on a single-employer basis. *Kephart Plumbing*, 285 NLRB 612 (1987).

The Employers, the Association, and the Intervenor contend, inter alia, that the Regional Director erred in failing to find that the Association, on behalf of its employer members, granted 9(a) status to the Intervenor on the basis of the Intervenor's offer to show evidence of its majority support, i.e., signed authorization cards from a majority of employees of each Employer, and the Association's clear and unequivocal acknowledgement that the Union enjoyed majority support. Contrary to the Regional Director, we find merit in this contention.

The Association first recognized the Intervenor as the majority representative of employees of its employer members in 2000.[5] Carmen Barrasso, representing the Intervenor at that time, testified that he met with Association president Patti, told Patti that he was seeking 9(a) recognition, and indicated that he had signed authorization cards with him. According to Barrasso, Patti stated that he realized that the Intervenor was the exclusive bargaining representative for plasterers, and that it was not necessary for Barrasso to show him the cards because the Association recognized the Intervenor as the exclu-

[3] Association members do not initially sign the negotiated agreement. The Association sends each member a copy of the signed contract and requests that each member sign and return it to the Association to indicate that the member has reviewed the contract. That signature is not a requirement for the validity of the contract.

[4] The Petitioner states that Association members vote on whether to accept or reject a collective-bargaining agreement and that "anyone who objects to the vote of the majority 'is out the door.'" The Petitioner failed to point out, however, that Jerome Rosen testified that "if one [Association member] objected and there were eight others that agreed, the one that objected is . . . . not out the door, he had to agree to what was negotiated."

[5] Recognition was actually granted at this time to Plasterers Local 260. On July 1, 2000, as ordered by John Dougherty, General President of the Operative Plasterers' and Cement Masons' International Association, Local 260 merged with Local 530. No issues are timely raised with respect to this merger. That is, there was, and is, no timely attack on the Employer's recognition of Local 530.

sive bargaining representative for plasterers. The Association and the Intervenor subsequently signed a 2-year contract.

The Intervenor's president, Carmine Mingoia, met with Patti in 2002 to negotiate a new contract. Patti told Mingoia that the Association would enter into a 9(a) agreement with the Intervenor based on the same circumstances as in 2000, and that Patti knew that the Intervenor was the exclusive bargaining representative for plasterers. Patti testified that Mingoia offered to show him authorization cards for the employees of each employer-member of the Association and that Mingoia had segregated the cards into piles for each of the eight or nine companies that were Association members at the time. Patti testified that he told Mingoia that it was not necessary for him to see the cards, and that he recognized the Intervenor as the majority representative of the employees of each member contractor. Patti testified that the Association unequivocally recognized the Intervenor as the majority representative of employees of each member of the Association,[6] including Donaldson and Rosen, who were Association members at that time. The Intervenor and the Association signed a contract shortly thereafter.

The third employer in this case, Cooper Plastering Corp., joined the Association shortly after the 2002 contract was executed. Patti testified that he showed James Cooper, the owner, the contract that the Association had signed with the Intervenor and asked him to review it. Patti also told Cooper that he had spoken to Mingoia about Cooper joining the Association and that Mingoia said he had authorization cards from Cooper's employees. Patti told Mingoia that it was not necessary for him to see cards from Cooper's employees and that he voluntarily recognized the Intervenor as the majority representative of Cooper's employees.[7]

We find, contrary to the Regional Director, that the Intervenor has established that the Association granted it 9(a) status based on the following: (1) Barrasso, in 2000, and Mingoia, in 2002, asked Patti to recognize the Intervenor as the 9(a) representative of employees employed by Association members; (2) Barrasso and Mingoia, on the Intervenor's behalf, offered to show Patti authorization cards signed by a majority of the employees of each Association member; and (3) Patti, on behalf of the employer members of the Association, acknowledged that the Intervenor represented a majority of employees of each employer, and unequivocally accepted the Intervenor's demand for 9(a) recognition based on that acknowledgment. Further, the parties memorialized their 9(a) relationship in the July 2002 contract, which states in its recognition clause that the Employer recognizes the Intervenor as the employees' majority representative pursuant to Section 9(a) of the Act.[8]

We therefore find that the Association and the Intervenor established a relationship governed by Section 9(a), not Section 8(f), of the Act.

Appropriate unit. Where, as here, an employer is part of a multiemployer bargaining relationship governed by Section 9(a), petitions for single-employer components of a multiemployer association will not be entertained. *Arbor Construction Personnel,* supra; *Hunts Point Recycling Corp.*, 301 NLRB 751, 752 (1991). Consequently, because the Employers involved in this proceeding have a history of bargaining on a multiemployer basis governed by Section 9(a) of the Act, the petitioned-for units of employees of each of the Employers involved in this proceeding are not separately appropriate, and that the only appropriate unit is a multiemployer unit.

In sum, we find that the Association and the Intervenor are in a collective-bargaining relationship governed by Section 9(a) of the Act and, therefore, that the petitioned-for single-employer units are not appropriate. Accordingly, we remand this case to the Regional Director for further action consistent with this Decision.

ORDER

The Regional Director's Decision and Direction of Election is reversed. This proceeding is remanded to the Regional Director for further appropriate action consistent with this Decision on Review and Order.

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[6] While the date on which recognition was granted is not specified, it is clear that recognition was granted in 2002, 3 years before the instant petitions were filed.

[7] In making his findings, the Regional Director relied on the fact that certain testimony was not corroborated, that certain Intervenor and Association representatives did not testify, and that the individual employers did not testify about the circumstances surrounding the Association's recognition of the Intervenor. Contrary to the Regional Director, we do not find compelling the absence of such corroborative testimony in this case. We note that none of the testimony on which we rely was contradicted or rebutted. We also note that the lack of testimony from discrete employers concerning the Association's recognition of the Intervenor is consistent with the concept of multiemployer bargaining and with those employers' membership in a multiemployer association to which they have unequivocally delegated the authority to deal with the Intervenor on their behalf.

Further, we disavow the Regional Director's findings based on evidence not in the record here, but rather evidence introduced in a different representation proceeding involving different parties than the present case.

[8] We find it unnecessary to rely on *Central Illinois Construction*, 335 NLRB 717 (2001), because our finding that the Intervenor achieved 9(a) status is not based solely on the language of the contract. Chairman Battista and Member Schaumber express no opinion as to whether *Central Illinois Construction* was correctly decided.

Dated, Washington, D.C. November 30, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD